IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

WP(C).No. 5064 of 2007(C)

PETITIONER:

DR. T.SHEELA SHENOY,
PROF. OF OBSTETRICS & GYNAECOLOGY,
MEDICAL COLLEGE, CALICUT-8.

BY ADV. SRI.ASP.KURUP
SRI.SADCHITH.P.KURUP

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY
PRINCIPAL SECRETARY, (HEALTH & FAMILY WELFARE
DEPARTMENT), GOVERNMENT OF KERALA,
KERALA SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DIRECTOR OF MEDICAL EDUCATION,
OFFICE OF THE DIRECTOR OF MEDICAL EDUCATION,
MEDICAL COLLEGE P.O., THIRUVANANTHAPURAM.

ADDITIONAL RESPONDENTS

3. DR.P.SHOBANA
PROFESSOR AND HEAD OF THE
DEPARTMENT OF OBSTETRICS AND Gynecology
T.D.MEDICAL COLLEGE, ALAPPUZHA

Impleaded vide order dated 07-03-07 in I.A.No.3298/07

BY ADV. SRI.C.S.MANILAL
GOVT. PLEADER SRI.A.J.VARGHESE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07/03/2007 ALONG WITH WPC NO. 7439 OF 2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.M.JOSEPH, J.

W.P.(C).NOs.5064 & 7439 OF 2007

Dated this the 7th day of March, 2007

JUDGMENT

Since the issue involved in these cases are connected, they are disposed of through this common judgment.

Case of the petitioner in W.P.(C)No.5064/07 in brief is as follows:

Petitioner was working as Professor and Head of the Department of Obstetrics and Gynecology in the Medical College, Thiruvananthapuram. She is due to retire on 31-05-2008. By Ext.P1 order dated 17-01-2007 which is produced as Ext.P4 in the other writ petition, Government directed that the petitioner be transferred and posted as Professor in the Medical College, Kozhikode. It was further ordered that considering the importance of the WHO, ICMR and other project works and teaching assignments in CERTC being handled by the petitioner, she is also

permitted to attend those work. It is further stated that the days spent for such work shall be treated as duty leave with the permission of the Principals of the respective Medical Colleges and more importantly that she will be posted back in the Medical College, Thiruvananthapuram with effect from 01-06-2007. This order came to be passed pursuant to the judgment in W.P.(C)No.31389/06. The said writ petition was filed by Dr.N.Syamala, Professor in the same department. Apparently, the litigation arose pursuant to the mutual transfer between Dr.B.Prasannakumari, Professor in the Medical College, Kozhikode and Dr.N.Syamala, working, as already stated, in the Medical College, Thiruvananthapuram. By Ext.P1 order Dr.N.Syamala was permitted to continue at Thiruvananthapuram. Thereafter, petitioner joined pursuant to Ext.P1 as evident from Ext.P2 dated 25-01-2007. Thereafter she addressed Ext.P3 representation. In Ext.P3 her request is that as on 01-05-2007 there will be an open vacancy in the Medical College,

Thiruvananthapuram consequent to the retirement of Dr.Busharath and in Ext.P1 Government assured that posting will be given on 01-06-2007 and therefore she requested that she may be posted back in the Medical College, Thiruvananthapuram on 01-05-2007. Ext.P4 is an order relied on by the petitioner.

2. Petitioner in W.P.(C)No.7439/06 is one Dr.P.Shobana who is presently working as Professor and Head of Department of Obstetrics and Gynecology in the T.D. Medical College, Alappuzha. She challenges Ext.P4, which, as already stated corresponds to Ext.P1 in other writ petition. According to her, Ext.P4 to the extent of overlooking the claim of the petitioner for a transfer to the Medical College, Thiruvananthapuram, is liable to be set aside. It is her case that Dr.Sheela Shenoy (the petitioner in the other writ petition) is an officer working the lion portion of her service in Thiruvananthapuram on account of political and other influence and was immune from transfer all the time. It is stated that she is working in Thiruvananthapuram for the last more than

10 years in different post. According to the petitioner, she is a resident of Thiruvananthapuram having home station at Thiruvananthapuram and her claim has been sidelined. Petitioner relies on Exts.P8, P9 and P9(a) documents to show that the particular officer in charge of the project has to give way when he is transferred to the incoming officer and therefore re-transfer of Dr.Sheela Shenoy on the ground of her association with the project of WHO and ICMR are absolutely untenable. She has stated that it is illegal and malafide also. She complained that re-transfer in the very same transfer order is an unheard of procedure and it is unprecedented. Petitioner has a case that she is due to retire on February 2008 while Dr.Sheela Shenoy is due to retire later on. Petitioner relies on Ext.P3 guidelines passed by the Government. There is a challenge to Ext.P4 as already stated. She has filed Exts.P1 and P6 before the Government.

3. Having heard learned counsel for the parties, these writ petitions are disposed of as follows:

There will be a direction to the first respondent to consider and take a decision on Exts.P1 and P6 in W.P.(C)No.7439/07 and Ext.P3 in W.P.(C)No. 5064/07 in accordance with law after hearing the petitioners in both the writ petitions. First respondent will bear in mind the guidelines as contained in Ext.P3 in W.P.(C)No.7439/07 in arriving at a decision in the matter. I make it clear that I leave open the challenge to Ext.P4 in W.P.(C)No.7439/07 and Ext.P1 in W.P.(C)No.5064/07. A decision will be taken within a period of five weeks from the date of receipt of a copy of this judgment.

K.M.JOSEPH
JUDGE

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